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Directive 86-30: Individual Liability For Use Tax Due Date of Return and Payment; Interest and Penalties

Facts: On March 5, Taxpayer Adams purchased a valuable antique for \$10,000 from an out-of-state retailer not engaged in business in the Commonwealth. Adams had the property delivered here on May 10, and has used it here since that time. It is assumed that no sales or use tax was due or paid to a state other than Massachusetts, and that neither the Massachusetts sales tax nor the use tax was collected from Adams by the retailer.

For purposes of this Directive, the word “use” means “storage, use or other consumption,” as those words are defined in G.L. c. 64I, and the word “property” means “tangible personal property,” as defined in G.L. c. 64H, § 1(15) and G.L. c. 64I, § 1.

Issue 1: Is Adams liable for the use tax because of his use in the Commonwealth of property that he purchased in another state?

Discussion: In general, the use tax is imposed on the use in the Commonwealth of property purchased for use here. The tax rate is 5% of the sales price of the property. G.L. c. 64I, § 2. The use tax complements the sales tax, and forms with it a system designed to tax any transaction, not specifically exempt, in which property is sold for use here, whether the sale occurs inside or outside the Commonwealth. *Towle v. Commissioner of Revenue*, 397 Mass. 599, 604 (1986).

Three types of transactions are exempt from the use tax. The first type is one in which the Massachusetts sales tax is collected on the sale of the property purchased for use here. G.L. c. 64I, § 7(a). The second is one in which the sale of the property purchased for use here is exempt under the sales tax. G.L. c. 64I, § 7(b). The third is one in which a tax is legally due and paid in another state or territory of the United States on the sale of the property purchased for use here, but only to the extent the foreign tax equals or exceeds the tax that would be imposed in Massachusetts. This exemption only applies, however, if the other state or territory allows a corresponding exemption for sales or use taxes paid to the Commonwealth. G.L. c. 64I, § 7(c).

If none of these exemptions apply, the transaction is subject to the use tax, and the person who uses the property here is liable for the amount of tax imposed, which is 5% of the purchase price. G.L. c. 64I, § 3.

Directive 1: Adams is liable for the use tax on his use in the Commonwealth of the property that he purchased in another state. The amount of tax imposed is \$500, five percent of the purchase price of the property.

Facts 2: The facts here are the same as above.

Issue 2: What is the due date of the use tax return and payment that must be filed by Adams, an individual purchaser liable for the use tax?

Discussion: If a vendor has not collected the use tax, the purchaser must file a use tax return with the Commissioner and pay the tax imposed. G.L. c. 64I, §§ 2, 3. Individual purchasers, who are not themselves vendors, must file an Individual Use Tax Return, Form ST-11, available from the Department of Revenue, Taxpayer Assistance Bureau. Both the return and payment are due on or before the twentieth day of the month following the one in which the property is first used here. G.L. c. 64I, § 2, G.L. c. 62C, § 16(i); *Towle v. Commissioner of Revenue*, 397 Mass. at 607 (1986).

In completing Form ST-11, a purchaser should enter the date the property was first used in the Commonwealth in the column entitled "Date of Purchase", if the date of the first use is later than the date of purchase. The purchaser has the burden of proof for establishing the date of first use and must retain adequate records to substantiate the date. Such records include bills of lading, customer receipts and leases of storage space.

Late payments are subject to interest, calculated from the due date of the return, without regard to any extension of time to file. G.L. c. 62C, § 32. Late payments and returns are also subject to penalties, calculated from the due date of the return and payment, including any extensions granted by the Commissioner. G.L. c. 62C, § 33(a), (b). (For rules concerning extensions of time to file under the use tax, see 830 CMR 62C.19(7)).

Directive 2: Adams must file an Individual Use Tax Return, Form ST-11, and pay the tax imposed on or before June 20, the twentieth day of the month following the one in which he first used the property here.

A late payment or return is subject to interest and penalties, calculated from the due date of the return or payment.

Reference: G.L. c. 64H, § 1(15); G.L. c. 64I, §§ 1, 2, 3, 7; G.L. c. 62C, §§ 16(i), 32, 33; *Towle v. Commissioner of Revenue*, 397 Mass. 599 (1986).

/s/Ira A. Jackson
Ira A. Jackson
Commissioner of Revenue

31 December 1986

DOR-D 86-30

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.